



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

UILs: 3401.00-00, 3401.01-00,
3121.00-00, 3121.01-00

Date Signed: April 4, 2001
Signed By: Michael A. Swim
CC:TE/GE:EOEG:ET1:JSpires
COR-100723-01

Number: **INFO 2001-0107**
Release Date: 6/29/2001



Dear [REDACTED]:

Your December 26, 2000 inquiry has been forwarded to this office for a response. In your letter, you noted that Revenue Ruling 58-515 states that compensation received by an undercover police officer that is turned over to the police department is not includible in the officer's gross income. You asked for an explanation of the proper disposition of these earnings for purposes of federal income tax withholding and Federal Insurance Contributions Act (FICA) taxes for individuals performing undercover law enforcement duties.

As a general matter, apart from the procedure for issuing a formal opinion as described in Revenue Procedure 2001-1, 2001-1 I.R.B. 1, the Internal Revenue Service is not able to provide binding legal advice applicable to particular taxpayers. We are, however, able to provide general information. Accordingly, in response to your request, we have reviewed the facts that you provided to us and are furnishing general information relevant to the issue of determining the proper disposition of the federal income tax withholding and FICA taxes in this context.

Section 61 of the Internal Revenue Code (Code) provides that gross income means all income from whatever source derived, except as otherwise provided. Compensation for services is generally included in gross income under § 61(a)(1) of the Code. However, it is well settled that income received by an individual as an agent and turned over to his principal is income to the principal and not the agent. See Maryland Casualty Co. v. United States, 251 U.S. 342 (1920). It is equally well settled that income earned by an individual not as an agent is taxed to the earner of the income, even though the income may be assigned to another. See Kelly v. Commissioner, 62 T.C. 131 (1974); Lucas v. Earl, 281 U.S. 111 (1930).

Section 3402(a) of the Code generally provides that every employer making payment of wages deduct and withhold federal income taxes from such payments. Under section 3401(a) of the Code, wages for federal income tax withholding purposes are generally defined as remuneration for employment. Under § 3101 of the Code, FICA tax is

COR-100273-01

imposed upon wages received by an employee (employee portion of FICA tax) and, under § 3111 of the Code, FICA tax is imposed upon wages paid by an employer (employer portion of FICA tax). Section 3102(a) of the Code provides that employers deduct the FICA tax imposed under § 3101 from wages as and when paid to employees. Under § 3121(a) of the Code, wages for purposes of FICA tax are generally defined as all remuneration for employment. Generally, to the extent that an undercover law enforcement officer receives remuneration for services performed as an employee to an employer other than the officer's law enforcement agency, these earnings would be considered wages for FICA tax and federal income tax withholding purposes.

In Revenue Ruling 58-515, 1958-2 C.B. 28, a police officer in the performance of his duties as an employee of the police department entered into employment in private industry for the purposes of obtaining certain information for the department without disclosure of his identity. The police officer continued to receive his regular compensation from the department and he remitted the compensation received from the private employer to the Police Pension Fund. That Ruling held that, under these circumstances, the police officer was employed by the private employer as an agent of the police department and that the compensation that he received and remitted to the Police Pension Fund was not includible in his gross income for federal income tax purposes. That Ruling also instructed the officer to attach the Form W-2 from the private employer to his federal income tax return with a written explanation in accord with the instructions provided in that ruling.

Whether a law enforcement officer acting in an undercover capacity is an agent depends upon the law of agency. Payments received by a law enforcement officer acting in an undercover capacity for services performed for a private employer, that are received by the officer as an agent for a principal (officer's law enforcement agency), and remitted over to the principal (officer's law enforcement agency), would not be considered wages to that officer for FICA tax and federal income tax withholding purposes. When we state that the officer is acting in an undercover capacity, we mean that the officer's undercover assignment is from his law enforcement agency and the law enforcement agency directs that the officer perform these services for that private employer.

We hope you find the foregoing information helpful. If you have any additional questions, please contact Joe Spires (Identification No. 50-17971) of my staff who may be reached at (202) 622-6040.

Sincerely,

Michael A. Swim
Chief, Employment Tax Branch 1
Office of Assistant Chief Counsel
(Exempt Organizations/
Employment Tax/Government Entities)